IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States Courts
Southern District of Texas
FILED
JUN - 6 2005
Michael N. Milby, Clerk of Court

MICHAEL A. KELLEY, SR.,	§	
	§	
Plaintiff,	§	
v.	§	C.A. NO. C-________
	§	
STANDARD INSURANCE COMPANY	§	
& KOCH INDUSTRIES, INC.,	§	JURY DEMAND
	§	
Defendants.	§	

COMPLAINT FOR DENIAL OF SHORT TERM AND LONG TERM DISABILITY BENEFITS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW MICHAEL A. KELLEY, Plaintiff, by and through his attorney, Sam A. Westergren, complaining of Standard Insurance Company & Koch Industries, Inc., Defendants and would show the Court as follows:

PRELIMINARY STATEMENT

1. Michael A. Kelley, Sr., Plaintiff, brings this action to recover damages and for equitable relief under the provisions of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq., including 29 U.S.C. § 1140, to redress the actions of defendants in denying Plaintiff his right to compensation under that certain self insured plan for Short Term Disability which is funded by defendant Koch Industries, Inc., and administered by defendant Standard Insurance Company, and also denying Plaintiff his rights to Long Term Disability under an contract of insurance underwritten by defendant Standard Insurance Company and under which Plaintiff is a beneficiary.

2. Plaintiff also seeks compensatory and punitive damages for breach of contract, misrepresentation, breach of the duty of good faith and fair dealing and violations of the Texas Insurance Code and Texas Deceptive Practices Act, under the laws of the State of Texas.

JURISDICTION

3. Jurisdiction over Plaintiff's claims are conferred on this Court pursuant to 29 U.S.C. § 1132 & 28 U.S.C. § 1331, and the Plaintiff requests the Court to exercise supplemental jurisdiction over the Plaintiff's state law claims under 28 U.S.C. § 1367(a).

VENUE

4. Venue is proper in the Southern District of Texas, Corpus Christi Division, pursuant to 29 U.S.C. §1132 (e) (2) in that the breach of the insurance contracts in issue occurred in Corpus Christi, Texas where Plaintiff resides and received his Short Term Disability payments until June 5, 2003.

PARTIES

5. Plaintiff is, and at all times relevant to this action was a participant in and beneficiary of the Short Term Disability Plan, funded by Koch Industries, Inc. (hereafter "Koch), and administered by Standard Insurance Company (hereafter "Standard) and the Long Term Disability Plan, solely underwritten by Standard. It is alleged that both of said contracts are employee benefit plans as defined by 29 U.S.C. § 1002(7).

At this time, and at the time his causes of action arose, Plaintiff is and was a resident and domiciliary of Corpus Christi, Texas.

6. Koch is a corporation with it principal place of business being in Wichita, Kansas; its address is 4111 E. 37th Street North, Wichita, Kansas 67220. Standard is an insurance

corporation with its principal place of business being in Portland, Oregon; its address is 900 SW Fifth Avenue, Portland, Oregon 97204. Standard and Koch are employers engaged in an industry or activity affecting commerce within the meaning of 29 U.S.C. § 1002(5), (12). However, the primarily responsible defendant is Standard who is both the plan co-sponsor with Koch for the Short Term Disability Plan , 29 U.S.C. § 1002(16)(A), and administers the Short Term Disability Plan, 29 U.S.C. 1002(16)(B). Standard is the underwriter and insurer of the Long Term Disability Plan and has sole responsibility for same.

7. The two contracts of insurance disability benefits, the Short Term Disability Plan and the Long Term Disability Plan should be read *in pari materia*. Because of Plaintiff's covered disability under both Disability Plans is permanent, when the contract term for his benefits under the Short Term Plan concluded, which would have occurred on or about August 17, 2003, then Plaintiff's disability benefits under the Short Term contract would have merged with and poured over into the Long Term Disability Plan.

FACTUAL ALLEGATIONS

8. Plaintiff, as a former employee of Koch Industries, later of Koch subsidiary Flint Hills Resources, was covered under said disability plans if he should become unable to work at his job at Flint Hills Resources. His job at Flint Hills Resources was a Refinery Production Specialist and his duties included opening and closing large valves for dangerous petroleum products, climbing high storage tanks, bending and lifting and maintaining constant vigilance of the dangers of volatile petroleum products.

9. Prior to January of 2003, Plaintiff became permanently disabled within the meaning of the Short Term Disability Plan, which defines total disability as follows:

> "..You are Disabled, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your own Occupation.

10. Plaintiff submitted medical evidence of multiple medical conditions, documented by medical doctors which rendered him disabled and unable to perform with reasonable continuity the Material Duties of his Occupation at Flint Hills. Plaintiff is a veteran, having served honorably in the United States Army. The Veterans Administration determined, that as of January 27, 2003 that Plaintiff was "unable to secure or follow a substantially gainful employment".

11. The Veterans' Administration determination of unemployability and disability was also based upon service-connected disabilities. However, in spite of his physical conditions and the difficulties Plaintiff encountered in doing his job as a Refinery Production Specialist, all of his medical and physical conditions finally caught up with after having worked at Koch Industries/Flint Hills Resources from 1990 through January of 2003.

12. Based upon medical information furnished Standard by Plaintiff, the great majority of which emanated from medical doctors and other health care providers treating Plaintiff at the Veterans' Administration in Corpus Christi and San Antonio, Defendant Standard paid Plaintiff Short Term Disability Benefits in the net weekly amount of $491.00 through June 5, 2003. In spite of the voluminous medical documentation furnished by Plaintiff and which Standard accepted without question, which medical evidence corroborated that Plaintiff was unable to perform with reasonable continuity the Material Duties of his own Occupation, Standard, on or about June 17, 2003, notified Plaintiff that all disability payments would be terminated. This notification was without medical

justification or cause, and was arbitrary and capricious. Plaintiff has exhausted all administrative remedies he may have had to contest Standard's decision at issue, thereby leaving him no choice but to file this lawsuit.

13. By the terms of the Short Term Disability Plan, Plaintiff contractual benefits under said plan would have expired on or about August 17, 2003. However, at that time, Plaintiff was eligible for Long Term Disability Benefits. The Definition of Disability in the Long Term Disability Insurance Plan is as follows:

"..The definition of DISABILITY changes after LTD BENEFITS have been paid for 12 month.

1. Until LTD BENEFITS have been paid for 12 months, you are only required to be DISABILED from your own occupation.

You are DISABLED from your own occupation if, as a result of SICKNESS, ACCIDENTAL BODILY INJURY or PREGNANCY, you are EITHER

a. Unable to perform with reasonable continuity the material duties of your own Occupation; OR

b. Unable to earn more than 80% of your INDEXED PREDISABILITY EARNINGS while working in your own occupation.

Until LTD BENEFITS have been paid for 12 months, you will be considered DISABLED while working in another occupation if you are DISABLED from your own occupation. There is no limit on the amount you can earn from work in another occupation while you are DISABLED from your own occupation. One-half the amount of your earnings will be INCOME FROM OTHER SOURCES used the reduce the amount of your LTD BENEFIT.

2. After LTD BENEFITS have been paid for 12 months, you must be disabled from all occupations.

You are DISABLED from all occupations if, as a result of SICKNESS, ACCIDENTAL BODILY INJURY or PREGNANCY, you are EITHER:

a. Unable to perform with reasonable continuity the material duties of any gainful occupation for which you are reasonably fitted by education, training, and experience; OR

b. Unable to earn more than 60% of your INDEXED PREDISABILITY EARNINGS while working in your own or any other occupation.

14. Under the provisions of the Long Term Disability Policy, if disabled as defined above, and Plaintiff alleges that he is entitled to full disability as defined in the Long Term Disability Policy. Accordingly, under the terms of this contract of insurance, Standard is contractually bound to pay Plaintiff Long Term Disability Benefits until he reaches the age of 65. Plaintiff's date of birth is May 12, 1961. Accordingly, Plaintiff is entitled to receive Long Term Disability Benefits until May 11, 2026.

FIRST COUNT
ERISA VIOLATION

15. Paragraphs 1 through 14 are repeated and realleged the same as though pleaded herein in full.

16. Standard's termination of Plaintiff's Short Term Disability Benefits and Koch's alleged approval thereof was done without justification or excuse in violation of the provisions of ERISA.

17. The primary justification and reasons for terminating Plaintiff's benefits were those of Standard in that by terminating Plaintiff's Short Term Disability Benefits they were able to prevent Plaintiff's Short Term Disability Benefits from being merged into and poured over into the Long Term Disability contract of insurance, thereby removing Plaintiff's claim as a liability of Standard's. Thus, by eliminating Plaintiff's claim, Standard was empowered to lessen its reserve requirements for Plaintiff's claim by an amount in excess of $500,000, thereby freeing up funds for investments and thereby increasing its profits.

SECOND COUNT
BREACH OF CONTRACT, BREACH OF THE DUTY OF GOOD FAITH AND

FAIR DEALING AND VIOLATIONS OF THE TEXAS INSURANCE CODE AND TEXAS DECEPTIVE TRADE PRACTICES ACT

18. Paragraphs 1 through 17 are repeated and realleged the same as though pleaded herein in full.

19. Standard is also liable for making representations to Plaintiff that he had a valid claim and that his medical records supported his disability. Even though Plaintiff is in fact disabled, and his medical records support disability, Standard denied Plaintiff's Short Term Disability Claim not for medical reasons or lack of supporting medical documentation, but only to avoid liability under the Long Term Disability Policy it has underwritten under which it was contractually obligated to pay Plaintiff until May 11, 2026.

20. Such actions by Standard constitute, under the laws of the State of Texas, breach of its Long Term Disability Insurance Contract, breach of its duty of good faith and fair dealing and constitute unfair or deceptive acts or practices in violation of § 541.003 of the Texas Insurance Code and in violation of §17.46 of the Texas Business and Commerce Code. Sixty (60) days notice under §17.505 of the Texas Business and Commerce Code was not practicable due to the fact that the two year statute of limitations starts to run on or about June 17, 2003.

21. As a result of Standard's misrepresentations, fraudulent and deceptive acts and practices, in violation of Texas law, Plaintiff has suffered a severe loss of income, resulting in compensatory damages, including economic damages and emotional pain and mental anguish and suffering.

22. Plaintiff alleges that under the facts and circumstances of this case and pending discovery he should be awarded punitive damages against Standard.

PRAYER

Plaintiff requests that this Court exercise jurisdiction over these claims and award:

1. Full legal and equitable relief under ERISA, including restoration of all of Plaintiff's Short Term Disability Benefits plus reinstating and/or establishing Plaintiff's rights as a beneficiary under the Long Term Disability Plan at issue with Standard;

2 Alternatively, Plaintiff requests that the Court decide under the principle of anticipatory breach that the total amount, discounted under the applicable rates, due under the Long Term Disability Policy be awarded to Plaintiff against Standard in an amount in excess of $500,000;

3. Compensatory damages;

4. Punitive damages;

5. Attorney's fees and costs; and

6. All other relief that the law and equity allow.

Respectfully submitted,

SAM A. WESTERGREN
615 Leopard Street, Suite 516A
Corpus Christi, TX 78476
(361) 887-0083
Fax: (361) 887-0084
TX State Bar No. 21222000
Southern Dist ID NO. 14025
Attorney In Charge for Plaintiff,
MICHAEL A. KELLEY, SR.

JS 44 (Rev 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS Michael A Kelley, Sr.

(b) County of Residence of First Listed Plaintiff Nueces
(EXCEPT IN U S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Sam Westergren, atty
615 Leopard Street #516 A
Corpus Christi, TX 78476 (361) 887-0083

DEFENDANTS

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE. IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U S Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☒ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt Relations
- ☐ 730 Labor/Mgmt Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl Ret Inc Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 29 U.S.C. Sec 1001, et. seq

Brief description of cause: BREACH OF EMPLOYEE Benefit Plans (ERISA) Disability Benefits

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** 500,000

CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): No Pending Cases JUDGE ______ DOCKET NUMBER ______

DATE 6-6-05 SIGNATURE OF ATTORNEY OF RECORD Sam Westergren

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG JUDGE ______